

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-051443

08/01/2011

HONORABLE DANIELLE J. VIOLA

CLERK OF THE COURT

C. Smothers

Deputy

IN RE THE MATTER OF
ANN MARIE SEWELL-SIMS

DOUGLAS G PARKER

AND

GREGORY M SIMS

GREGORY M SIMS
4615 N 22ND ST # 203
PHOENIX AZ 85016

BRIAN YEE PH.D.
7220 N 16TH ST BLDG K
PHOENIX AZ 85020

MINUTE ENTRY

The Court took this matter under advisement after the Evidentiary Hearing held July 28, 2011. The Court has considered the evidence presented at said hearing, including the testimony from the witnesses and the arguments of the parties and counsel. The Court has considered the issues presented and makes the following findings:

On March 30, 2010, this Court found that a "Parenting Coordinator is essential to assist the parties in this case." The Court affirmed the appointment of Dr. Brian Yee as previously ordered on January 24, 2011. To date, Mother has complied with the Court's order. Father was ordered to meet with the parenting coordinator assigned in this matter on at least four occasions. Father never complied with the Court's orders. Father was informed by Dr. Yee's office that he could make payments prior to any appointment but that the portion of the fee would need to be paid in full by the date of service. Father made no attempt to make payments. On June 2, 2011, the Court order Father to contact Dr. Yee's office to schedule an appointment no later than June 30, 2011. On June 2, 2011, the Court notified Father that failure to comply could result in sanctions. Father waited until June 24, 2011 to contact Dr. Yee's office. The Court finds that Father's correspondence with Dr. Yee was antagonistic and harassing. Father later filed an

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updated Affidavit of Financial Information only after the Court concluded that Father's Affidavit of Financial Information showed Father had the ability to meet with Dr. Yee.

The Court further finds that Father has involved the minor child in the dispute between Mother and Father with respect to where the child will attend high school. The child was interviewed by Conciliation Services in December 2010 and more recently on June 20, 2011. The child reported information to suggest that he reads court documents with Father or provided to him by Father. The child also indicates that he discusses with Father issues that are being litigated between Father and Mother. The child also indicates that it is his Father who tends to talk with him about Court issues. The Court finds that Father has empowered the child with respect to the ongoing dispute between the parents as it relates to parenting time and the selection of the child's high school.

On July 6, 2011, Mother filed a petition to enforce the Decree regarding parenting time along with a request for sanctions because Mother has not been able to see the child for almost two months. Father did not present evidence of his attempts to comply with the current parenting time orders. Father never told the child that he was required to visit his Mother. Mother has attempted to see the child and was informed that the child would not be going with Mother. Mother contacted police and was informed that they would not physically force the child to go with Mother. Mother requested cooperation from Father to assist with having the child go with Mother for parenting time. Father did not present any evidence to suggest that he actively tried to comply with Mother's parenting time. Father has again empowered the minor child to decide whether to visit with Mother and when he will visit with Mother. The child is now refusing visitation until Mother allows the child to do as he wishes. The Court finds Father in contempt.

Mother presented evidence that the child was absent in excess of twenty days during his eighth grade year. Father presented no evidence to explain why the child was absent from school in excess of twenty days during his eighth grade year. The child was with Mother on two of the twenty days and his absence was excused. Most, if not all, of the other absences occurred on days when Father was exercising parenting time. Additionally, the child received a failing grade during his eighth grade year and several grades that were almost failing. Mother intended for the child to attend summer school so that he would be prepared to enter high school. Mother was not able to follow through with summer school for the child because Mother was not able to exercise any parenting time with the child during the months of June and July of 2011.¹ During the last year, Mother made efforts to meet with the teachers at the child's school in an effort to address concerns raised by the child and Father. Father did not participate. Mother expressed a

¹ Mother was further frustrated in her efforts by Father's objection to Mother's proposed vacation time with the child.

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concern about the child having a well-rounded education as opposed to having a singular experience with golf. Mother further testified that the child will not be allowed to remain on any high school golf team if the child's grades do not improve beyond those he received during his eighth grade year. Father failed to express any concern about the child's absences from school or about the fact that the child's grades might prevent him from playing golf. Father expressed his contention that he was fighting for the child's wishes. Mother is concerned that the child is being empowered to make decisions that she believes should be made by the parents as opposed to the child.

The Court finds that the child's best interests are not being served by the current custody order in which neither parent is vested with final decision making authority regarding education issues. The Court finds that Father has abdicated his decision making authority to the child.²

Mother and Father have a high conflict relationship which is evidenced by the Court's prior order appointing the Parenting Coordinator. Father failed and refused to comply with the Court's March 30, 2011 order regarding the Parenting Coordinator. The issues to be presented to the Parenting Coordinator included the selection of a high school for the minor child; winter break and holiday parenting schedule; Mother's parenting time during the minor child's summer golf tournaments³; any issues regarding Mother's employment travel schedule; and the appropriateness of communication by email.

IT IS THEREFORE ORDERED granting Petitioner/Mother's Petition to Enforce the Decree RE: Parenting Time and Request for Sanctions.

IT IS FURTHER ORDERED awarding Mother final decision-making authority with respect to educational issues.

IT IS FURTHER ORDERED that Mother shall be entitled to designate a third party to pick up the child on Wednesdays when Mother is scheduled to begin her parenting time. Mother or her designee shall pick up the child no later than 10:00 p.m. on Wednesday evenings.

IT IS FURTHER ORDERED modifying the current holiday visitation as follows: Mother shall have holiday visitation with the child after his release from school for winter break through noon on Christmas Day in the odd years and Father shall have holiday visitation with the child from noon on Christmas Day until the child is returned to school after the winter break in odd years. Father shall have holiday visitation with the child after his release from school for winter break through noon on Christmas Day in the even years and Mother shall have holiday

² The Court has no doubt that the child has formed an opinion as to his choice of schools and that the child is certainly old enough to express that opinion to his parents for their consideration.

³ This is now moot since Mother has not had parenting time with the child for the summer.

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visitation with the from noon on Christmas Day until the child is returned to school after the winter break in even years.

IT IS FURTHER ORDERED that Mother and Father shall submit all disputes to the Parenting Coordinator before filing a request for relief with this Court except in the case of an emergency involving the health, safety and welfare of the child.

IT IS FURTHER ORDERED that the party initiating a dispute with the Parenting Coordinator shall bear 100 percent of the cost of the Parenting Coordinator subject to reallocation by the Parenting Coordinator. The Court will not address non-emergency disputes that have not first been raised with the Parenting Coordinator for resolution.

IT IS FURTHER ORDERED that Father shall provide Mother with an email address upon receipt of this minute entry. Father shall not block Mother from using his email address.

IT IS FURTHER ORDERED that all communication between the parties, except for communication concerning the health, safety and welfare of the child of an emergency nature, shall be through e-mail. The parties may originate not more than two e-mails each day of not more than 75 words and may also respond to any e-mail originated by the other party in not more than 75 words. The communication shall be civil, non-threatening and shall concern the child only.

IT IS FURTHER ORDERED that Mother is entitled to make up parenting time of not less than twenty-three days. Mother shall provide not less than 48 hours notice to Father via email of her intent to exercise make up parenting time. Father shall make the child available consistent with Mother's notice.

IT IS FURTHER ORDERED that the parents shall schedule an appointment for the child with a counselor and both parents are required to participate in the child's counseling as directed by the counselor. Mother provided a list of two counselors as part of her pre-hearing statement. Father shall notify Mother by email no later than August 31, 2011, of his choice of counselors between Robert Wheeler and Kathleen Driscoll. If Father fails to comply with the Court's order, Mother shall select the counselor.

IT IS FURTHER ORDERED pursuant to A.R.S. §25-414 and Rule 76(D) of the Arizona Rules of Family Law Procedure that Father shall pay as a sanction to Mother her attorneys' fees. Not later than **August 14, 2011**, counsel for Mother shall submit all necessary and appropriate documentation to support an application for an award of attorney fees and costs, including a *China Doll* Affidavit and a form of order. By no later than **August 24, 2011**, Father shall file any written objection. If Mother's counsel fails to submit the application by **August 14, 2011**,

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no fees or costs will be awarded. The Court shall determine the award and enter judgment upon review of the Affidavit as well as any objections.

IT IS FURTHER ORDERED denying Father's Request for Clarification and Request for Expedited Ruling.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HONORABLE DANIELLE J. VIOLA

JUDICIAL OFFICER OF THE SUPERIOR COURT

FILED: Exhibit Worksheet

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.